

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

)	
Boston Edison Company)	
Cambridge Electric Light Company)	D.T.E. 05-85
Commonwealth Electric Company)	
NSTAR Gas Company)	
)	

**MOTION OF DOMINION RETAIL, INC. AND
DIRECT ENERGY SERVICES, LLC TO EXTEND APPEAL PERIOD**

Pursuant to G.L. c. 25, § 5 and 220 C.M.R. § 1.11(11), Dominion Retail, Inc. (“Dominion Retail”) and Direct Energy Services, LLC (“Direct Energy”) respectfully request that the Department grant a reasonable extension of the judicial appeal period that would otherwise apply to the Department’s December 30, 2005 Order granting the motion to approve the proposed settlement submitted by NSTAR, the Attorney General, Associated Industries of Massachusetts, and the Low-Income Energy Affordability Network (the “Settling Parties”).

I. Standard of Review

General Laws c. 25, § 5, states in pertinent part that a petition for appeal of a Department order must be filed with the Department no later than 20 days after service of the order “or within such further time as the commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling.” The Department’s regulation governing such extensions of the appeal period, 220 C.M.R. § 1.11(11), states:

Extension of Judicial Appeal Period. In accordance with M.G.L. c. 25, § 5, judicial appeals from final Department Orders must be filed within 20 days after service of the Order. Upon motion to the Department within the 20-day period, a party may request an extension of the appeal period. Reasonable extensions shall be granted upon a showing of good cause.

Good cause is a relative term and depends on the circumstances of an individual case. NSTAR, D.T.E. 03-47-C (2004), at 10; Investigation by the Department of Telecommunications and Energy on its own Motion Regarding Payphones, D.P.U./D.T.E. 97-88/97-18 (Phase II-A) (1999), at 4. Whether good cause has been shown “is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other party.” NSTAR, 03-47-C, at 10-11. The filing of a motion for extension of the judicial appeal period automatically tolls the appeal period for the movant until the Department has ruled on the motion. Id. at 11.

II. Good Cause Exists to Grant a Reasonable Extension of the Appeal Period.

General Laws c. 25, § 5, and 220 C.M.R. § 1.11(11) allow the Department to grant a reasonable extension of the 20-day appeal period for good cause. Good cause for such an extension exists in this case in the form of the extraordinarily compressed schedule for the review and consideration of a filing that purported to take the place of what otherwise would have been many months of administrative review. The Settling Parties filed their motion seeking approval of the proposed settlement only six weeks ago, on December 6, 2005. As summarized by NSTAR in its Reply Comments, the proposed settlement contains the following elements:

- Rate Plan for NSTAR Electric (paragraphs 2.1 through 2.12);
- Rate Plan for NSTAR Gas (paragraphs 2.13 through 2.15);
- Merger of NSTAR Electric (paragraphs 2.16 through 2.18);
- Expansion of Boston Edison Storm Fund (paragraphs 2.19 and 2.20);
- Procurement Initiatives (paragraphs 2.21 and 2.22); and

- Customer Service Quality, Safety and Reliability Programs (paragraphs 2.23 through 2.36).

NSTAR Reply Comments at 3-5.

The Settling Parties described the proposed settlement as being in lieu of the adjudication of four base rate cases and performance-based regulation proceedings (one of each for Boston Edison Company, Commonwealth Electric Company, Cambridge Electric Light Company, and NSTAR Gas Company). NSTAR Reply Comments at 11. Along with their motion for approval of the proposed settlement agreement, the Settling Parties filed 122 exhibits, 23 of which were designated as pertaining specifically to the settlement, the remaining 99 presumably constituting what would otherwise have been the base rate case filings for the four NSTAR companies.¹ The proposed settlement also addressed “certain ancillary matters,” (Joint Motion for Approval of Settlement Agreement at 1), among which is a provision through which NSTAR can earn a financial incentive of “up to the maximum potential SQI penalty that could be imposed under G.L. c. 164, § 1E(c) in any given year” on annual basis for three years for pursuing “litigation at FERC, and otherwise, to advocate on behalf of its customers in order to mitigate electricity market inefficiency costs.” Settlement Agreement at paragraphs 2.32 through 2.36.

Despite the length and complexity of the filing, the Settling Parties demanded approval by the Department of the Settlement Agreement in its entirety by December 30, 2005 or the Settlement Agreement would be deemed withdrawn. Joint Motion for Approval of Settlement Agreement at 1-2. In an apparent effort to accommodate the

¹ At least one party has represented that these exhibits total approximately 3,000 pages in length, a figure the undersigned parties have made no attempt to verify. Motion of Cape Light Compact to Extend Appeal Period at 1.

Settling Parties' demand for a favorable decision in a little over three weeks from the filing date, the Department issued a notice regarding the filing on December 7, 2005, setting a deadline for intervention and the filing of written comments on December 20, 2005, less than two weeks after the issuance of the notice. Interested parties were also given the opportunity to give oral statements regarding the proposed settlement at public hearings that were held on December 29, 2005.² As requested by the Settling Parties, the Department granted the Joint Motion for Approval of Settlement Agreement in its entirety, without modification, on December 30, 2005.

It was virtually impossible for any party other than one of the Settling Parties to gain a full understanding of all of the elements of the proposed settlement agreement in the time provided by the Department's schedule. The Settling Parties apparently shared this view, as their frequent response to concerns raised by those who did file written comment or attend the public hearings was that the commenting party's understanding of the proposed settlement is factually incorrect. See, e.g., NSTAR Reply Comments at 11-18; Boston Transcript at 18-21. The effect of the compressed review period was exacerbated by the fact that interested parties such as Dominion Retail and Direct Energy were not even contacted by the Settling Parties during settlement discussions, much less asked to participate. Thus, Dominion Retail and Direct Energy had no advance notice of the general form or content the settlement agreement would take, or even that a settlement in lieu of base rate cases for the NSTAR companies was imminent.

The need to gain a more complete understanding of the Settlement Agreement and the underlying rate filings before deciding whether an appeal is warranted constitutes

² Dominion Retail and Direct Energy filed timely petitions to intervene, which were granted by the Hearing Officer in her December 27, 2005 ruling. Dominion Retail made a statement at the public hearing held in Boston on December 29, 2005.

good cause for an extension of the judicial appeal period in these circumstances. Such an extension would serve the public interest in two ways. First, there is a strong likelihood that an extension of the appeal period will decrease the likelihood of an eventual appeal. If, as the Settling Parties have stated, the concerns expressed by some parties are due to an insufficient understanding and apprehension of the benefits that will flow from the settlement, then further study and reflection may cause potential appellants to conclude that their initial impressions were incorrect and the settlement is, in fact, in the public interest. Second, a reasonable extension of the appeal period will have no untoward effect on the Department's policy in favor of finality of judgments. The Department's Order approving the settlement will not be stayed pending an appeal, (G.L. c. 25, § 5), and, as a practical matter, a reasonable extension of the appeal period would not have a material impact on the effects that might flow from any action the Supreme Judicial Court might take on appeal.

WHEREFORE, based on the foregoing, Dominion Retail and Direct Energy respectfully request that the Department grant their request for a reasonable extension of the judicial appeal period in this matter.

Respectfully submitted,

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Dated: January 18, 2006

Certificate of Service

I hereby certify that a copy of the foregoing document was served to the individuals on the attached service list by messenger or First Class Mail, on this 18th Day of January, 2006.

Christopher H. Kallaher